

App. No.: 09/826,820
Atty. Doc. No.: D02527

REMARKS

In the Final Office Action mailed May 10, 2005, the Examiner rejected claims 1-6, 8-13, 15, 16, 27-29, 31, 33-35, 37, 39 and 42-45 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,629,980 to Stefik et al. and rejected claims 7, 14, 30, 32, 36, 38, 40 and 41 under 35 U.S.C. 103(a) as being unpatentable over Stefik et al.

Applicant has amended claims 5, 7, 14, 15, 16 and 27 and cancelled claims 1-4, 6, 8, 11-13, 17-26, 31 and 33-45. No new matter has been added. The pending claims, as amended, distinguish over Stefik et al.

The Examiner's "Responses to Arguments" in the Office Action mailed May 10, 2005 are respectfully traversed. First, the Examiner asserts that he "has cited relevant portions of the references as a means to illustrate the systems taught by the prior art." A careful review of the current Office Action and the Office Action mailed on October 25, 2004 shows that this assertion is in error. Nowhere does the Examiner cite to a column, line or figure of Stefik et al. The Examiner also fails to show any relationship between any of the claimed elements and particular passages or figures of Stefik et al. The burden lies with the Examiner to provide support for the rejections made in an Office Action. (See *Ex parte Levy* cited in the last response.) It is also interesting to note that the Examiner emphasizes the burden on the Applicant to "point out the misconceptions or other inaccuracies made by the Examiner." This is impossible when the Examiner has failed to particularly point out specifically where in Stefik et al. any claim limitation, let alone all claim limitations, are taught or suggested.

The Examiner also argued that certain features were argued in the Response mailed January 25, 2005 that were not claimed. This is not true. Many of the limitations

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cited by the Examiner were listed in then pending dependent claims. The Examiner incorrectly assumed that only arguments for the allowability for the independent claims were presented in that response.

Finally the Examiner appears to offer contradictory points of view. In one paragraph the Examiner admits that "alternative points of view and subjective interpretative differences between the prior art of record and the present invention [exist]." In a later paragraph the Examiner appears to assume that both he and the Applicant should reach the same conclusions about the prior art because the Applicant and their representative are "schooled in the arts of the instant invention ... [and] ... are capable of comprehending and appreciating the prior art as disclosed by the inventors and accredited by the USPTO." While it is true the Applicants and their representative each possess technological knowledge, this knowledge is not a substitute for the Examiner providing a full explanation of why he believes Stefik et al. renders the present application unpatentable. Only when the Examiner provides specific citations to portions of Stefik et al. will it be possible to avoid the Examiner and Applicants from arguing alternative points of view about Stefik et al. and reach ultimate issues as to what is and what is not taught or suggested by Stefik et al.

In the Office Action mailed on October 25, 2004, the Examiner took Official Notice of personal versatile recorders, wireless networks and SSL connections. Applicant traverses the Official Notice with respect to the personal versatile recorders. Applicant respectfully requests the Examiner to cite a reference showing such a device.

With respect to the wireless networks and SSL connections, Applicants do not contest that these are well-known. However, the mere fact that they are well-known is

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not motivation to modify Stefik et al. The Examiner must supply some motivation as to why one of ordinary skill in the art would want to modify the teachings of Stefik et al. as alleged by the examiner. Mere conclusive statements are not evidence of motivation. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002) (vacating and remanding a PTO Board of Patent Appeals and Interferences decision because it relied on conclusive statements of the knowledge of one of ordinary skill in the art rather than on evidence of record showing a proper motivation to combine).

Pending claim 5 recites "providing the identification of the second device to the first device, wherein the identification of the second device is a certificate." Stefik et al. fail to teach or suggest this limitation. Instead, Stefik et al. teach transmitting other information such as a nonce, the names of the respective repositories, the time and the registration identifier sent by repository-1. *See* col. 28, lines 40-43. This information is not the same as the certificate claimed.

Pending claim 16 recites the "content [being] erased from said distribution means." This is not taught nor suggested by Stefik et al.

Pending claim 27 recites "trac[ing] the content distributed to the at least one playback device." Again, this is not taught nor suggested by Stefik et al.

Claims not specifically mentioned above are allowable due to their dependence on an allowed base claim.

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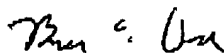
CONCLUSION


No fees are believed due for this response. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant respectfully requests reconsideration of the present application, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance. The Applicant's representative can be reached at the below telephone number if the Examiner has any questions.

Respectfully submitted,

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